

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
United Communications Corporation )  
WWNY-TV (Fac. ID No. 68851) ) CSR No. \_\_\_\_\_  
Carthage, New York )  
 )  
Petition for Waiver of Sections 76.92(f) )  
and 76.106(a) of the Commission's Rules )

To: Chief, Media Bureau

**PETITION FOR SPECIAL RELIEF**  
***of* UNITED COMMUNICATIONS CORPORATION**

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## SUMMARY

United Communications Corporation is the licensee of WWNY-TV, the CBS affiliate in Carthage, Jefferson County, New York. Television station WTVH is an out-of-market CBS affiliate in Syracuse, New York. WWNY-TV has been unable to exercise its program exclusivity rights in communities throughout Jefferson County because WTVH is considered, erroneously, to be “significantly viewed” there. This Petition for Special Relief is necessary to correct WTVH’s significantly viewed status.

If a television station is listed as significantly viewed with respect to a particular community, that listing should be grounded in both *viewability* (*i.e.*, that the over-the-air signal of the station is viewable in that community) and *viewership* – a factual finding that a significant proportion of local residents regularly watch the station’s programming: ‘significant viewing’ according to the criteria in Section 76.5(i). Significantly viewed status thus involves two dimensions. Both viewability and viewership are necessary for significantly viewed status properly to obtain.

In the vast majority of significantly viewed cases, the viewability of the distant station’s signal is not an issue; the only question is the popularity of the station’s programming. The instant case is an exception. As demonstrated in this Petition, WTVH’s signal is not actually viewable over-the-air in most communities in Jefferson County.

The key determinant of viewability is signal strength. Modern signal propagation models, which the Commission now uses routinely, can accurately predict signal strength. One such model is the computational engine within the FCC’s DTV Reception Tool. Utilizing this tool to generate the predicted signal strength of WTVH at each community in Jefferson County, the resulting data show that WTVH is not viewable over-the-air in any of those communities except those along the southern edge of the County. As to the bulk of the Jefferson County communities, WTVH cannot continue to hold significantly viewed status. This determination is confirmed by viewing data supplied by Nielsen. In every city, town and village where the TV Reception Tool predicted an inadequate signal level, the Nielsen diaries placed in non-cable, non-ADS homes reflect zero viewership of WTVH. Indeed, even in those communities where WTVH places a cognizable signal, it is a weak one, and always weaker than that of local CBS affiliate WWNY-TV. Thus it is not surprising that even within the WTVH contour, scarcely any viewership of WTVH is manifest.

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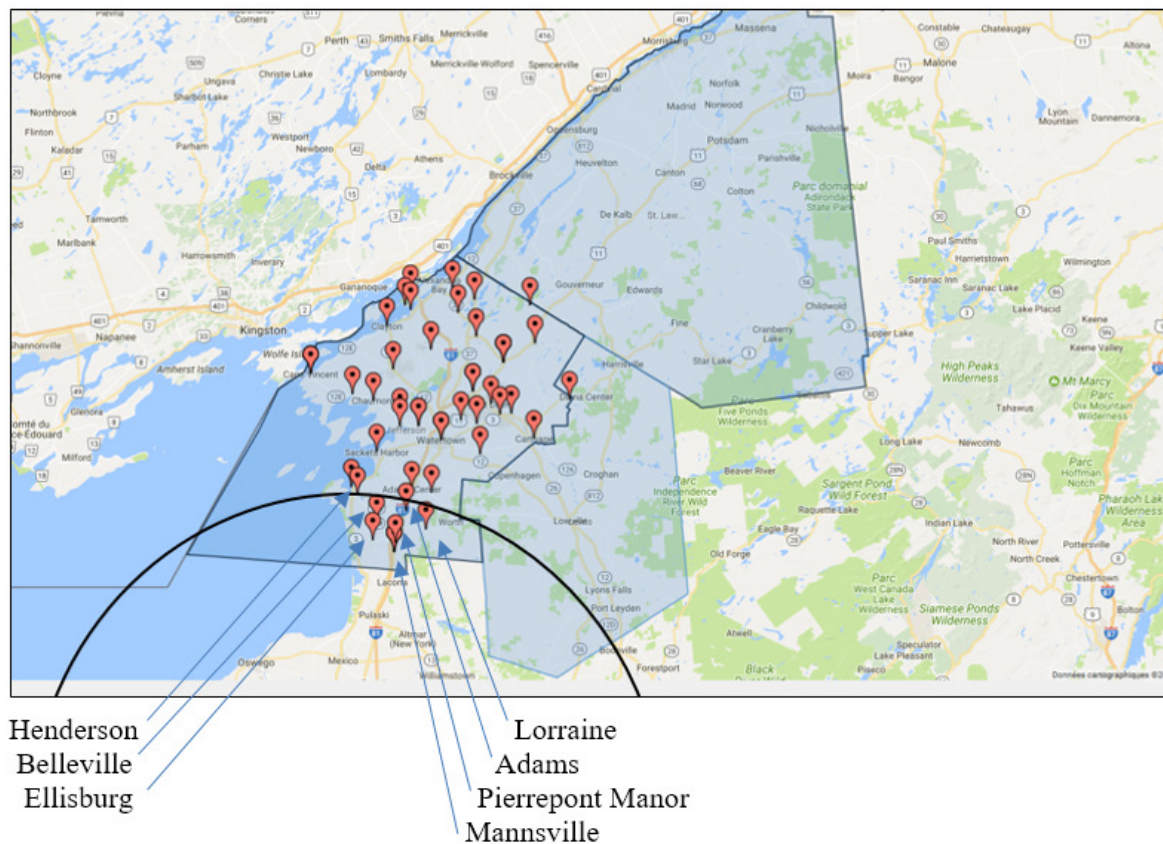
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<sup>2</sup> Under 47 C.F.R. §76.54(a), “signals that are significantly viewed in a county . . . are deemed to be significantly viewed within all communities in the county.”

viewable in that community, and (2) viewership of the station's programming in the community is 'significant' according to the criteria in Section 76.5(i).<sup>3</sup> Significantly viewed status thus involves a *viewability* dimension and a *viewership* dimension. WTVH's significantly viewed status in Jefferson County implies that its signal is viewable over-the-air in the 41 Communities and that its viewership in those communities is 'significant.'

Figure 1 depicts WTVH's radio horizon. The red tear-drops in the blue-shaded area are the zip code locations referenced in the attached Nielsen data.

**Figure 1**



The arc is WTVH's radio horizon – approximately 61 miles from the station's transmitter site. WTVH's radio horizon and its noise-limited contour are roughly coincident. The seven locations named are within that area. The remaining communities are not. Of those, most are more than 70 miles from the WTVH transmitter site. Many are more than 80 miles away.

<sup>3</sup> See *Cable Television Report and Order*, 36 FCC 2d 143, ¶84 (1972).

Figure 1 suggests *prima facie* that the signal of WTVH is not viewable throughout much of Jefferson County. A station whose signal is not viewable in a particular community cannot have viewership there – ‘significant’ or otherwise. Thus, as to any of the Subject Communities in which WTVH’s signal were not viewable, the station’s significantly viewed status would not be valid.<sup>4</sup>

The Commission has held for many years that the signals of television stations on the Significantly Viewed List are, in general, viewable over-the-air in the counties and communities listed. “We do not believe there is any serious dispute that, with very few exceptions, the signals in question are available over-the-air to individuals with rooftop antennas.”<sup>5</sup>

Not surprisingly, therefore, the viewability of a distant station ordinarily is not an issue in petitions for waiver of the Significantly Viewed Exception. Consequently, analyses in waiver petitions are usually confined to the targeted station’s viewership in a particular cable community: A petitioner must demonstrate, based on viewing surveys, that the distant station failed to sustain the significantly viewed threshold for two consecutive years.<sup>6</sup> The waiver procedure generates relevant evidence on this score for the obvious reason that household viewing surveys are a measurement of viewership.

What about a case that is one of the “very few exceptions” – that is, a case in which a station classified as significantly viewed is not, as a matter of empirical fact, viewable in the community in question? The waiver procedure as operationalized through Nielsen studies produces relevant evidence on this score as well. If a station’s signal is *not* viewable in a community, the station *a fortiori* cannot have viewership there. In that event the Nielsen statistics should show that the station garnered zero viewership (zero share and zero cume).<sup>7</sup>

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<sup>4</sup> Of course, the propagation of digital television signals can vary and particular cases can depart from standard patterns of technical range where terrain obstructions interfere with signal propagation. Here, however, if the significantly viewed status of WTVH were valid, it would mean that the station’s signal is generally viewable at impossibly great distances. Further, terrain obstructions are already factored into modern signal propagation prediction tools. And in any event, such obstructions would cut against viewability of the WTVH signal in Jefferson County.

<sup>5</sup> *Network Program Exclusivity Protection by Cable Television Systems (Reconsideration)*, 68 FCC 2d 1461, ¶20 (1978); *see also Desert Empire Television Corp.*, 86 FCC 2d 644, ¶10 (1981).

<sup>6</sup> *See* [47 C.F.R. §76.54\(b\)](#) and [47 C.F.R. §76.5\(i\)](#).

<sup>7</sup> Zero viewership can also manifest where a station is viewable in the community, but nobody watches it. For present purposes that scenario is not relevant. The point is that, *if it were the case that a distant signal was not viewable*, Nielsen studies should reveal this in the form of statistics indicating zero viewership, provided that Nielsen distributes enough diaries in non-cable, non-ADS homes in each subject community.

In the present case, this is exactly the data yielded by the Nielsen study for the community of Watertown (zip code 13601) – the largest of the 41 Communities. The signal of WTVH is not viewable over-the-air in Watertown. The Nielsen statistics, excerpted below, confirm this:

		Significant Viewing Study				
		Watertown				
		Feb14, Nov14, Feb15 & May15				
		Su-Sa 7A-1A				
		WTVH				
		WTVH				
Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13601	Number of Intabs	5	4	5	9	23
	Average Weekly Cume	0.00	0.00	0.00	0.00	0.00
	Cume Std. Error	0.00	0.00	0.00	0.00	0.00
	Share	0.00	0.00	0.00	0.00	0.00
	Share Std. Error	0.00	0.00	0.00	0.00	0.00

WTVH's signal is not viewable over-the-air in most of the *other* Subject Communities, either. Those cases likewise reflect universal zero viewership in the Nielsen studies. However, they differ from Watertown in one respect. As the Nielsen study for Watertown shows, the rate of diaries returned is one or more diaries per reporting period, over four periods. For the smaller communities, the rate of returned diaries is more irregular. With respect to the community of Carthage, for example, the Nielsen study indicates zero viewership across the board, except that no diaries were returned in the February 2014 reporting period.

If the *viewership* of a distant station is the material issue, as it is in the vast majority of significantly viewed cases, a sequence of intab diaries that does not include at least one diary per reporting period is inadequate. This makes sense. To classify a television station as 'significantly viewed' in a community outside of its market is to make a judgment that the distant station has a viewing audience in the community of a quality similar to that of physically local stations. The requirement that such a judgment be based on viewing data generated over a course of time is appropriate because this is relevant to the extent of a distant station's instantiation – its 'localness' – in the community. Requiring that viewership data be available in each reporting period relates to the sufficiency of the evidence on that issue.

In the present case, however, the issue is not the viewership level of WTVH's programming, but the *viewability* of the station's signal. It is not the nature of television signal propagation that a station's signal might be more viewable over-the-air in one Nielsen period and less viewable in another, except where the station has changed facilities between periods, or operated at reduced power in one period but not the other. If a signal is not actually viewable in a community, the existence of zero-viewership data in each of four Nielsen reporting periods is not needed in order to confirm that empirical fact.

Thus, we reason: If a station is not in fact viewable over-the-air in a community and Nielsen diaries are returned, the non-viewability will be reflected in zero viewership. This is relevant evidence because it is exactly what we should expect to find in such circumstances – as the Watertown case illustrates. But a petitioner’s demonstrating a signal’s non-viewability *cannot rest entirely* on Nielsen surveys because there will be times when non-cable, non-ADS Nielsen households do not return their viewing diaries consistently, as the Carthage case illustrates. In an ideal world, in which non-cable, non-ADS households in each township and village received numerous diaries, and all Nielsen households always returned their diaries, the viewability issue could be resolved purely on the basis of zero-viewership Nielsen statistics. But where that pattern is absent, in order to execute the waiver procedure a petitioner must work around this obstacle.

In the Commission’s technical rules, the key determinant of viewability is signal strength. A Nielsen statistic indicating that a distant station is not viewable manifests where the *strength of the signal*, for whatever reason, is not sufficient for ‘television service,’ even if the station’s programming is attractive. Here, where the Nielsen survey data reflect zero viewership but the rate at which diaries are returned is inconsistent, the viewability of WTVH must be evaluated by considering signal strength evidence directly.

Fortunately, the Commission’s signal propagation models are highly reliable predictors of signal strength. One such model is the computational engine within the FCC’s DTV Reception Tool. Utilizing this tool we generate the predicted signal strength of WTVH at each of the Subject Communities. This data shows that the signal of WTVH is not viewable over-the-air in most of those communities. As to communities where that is the case, WTVH cannot continue to hold significantly viewed status.

\* \* \*

The instant Petition for Special Relief is being filed pursuant to 47 C.F.R. §76.7. This rule requires that United “state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.”<sup>8</sup> As explained above, the facts of this case are an exception to the pattern of facts in play generally in significantly viewed analyses. For this reason we have taken pains to observe the admonition of Section 76.7 that particularity be blended with broader principle in order “to demonstrate the need for the relief requested.” The approach as we have framed it (1) contextualizes the relief sought within the Localism framework that motivates the Program Exclusivity Rules, and (2) parses the

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<sup>8</sup> 47 C.F.R. §76.7(a)(4)(i).



Significantly Viewed Exception in relation to the particular logic from which it arose. The Petition also contains a more detailed review of FCC and judicial precedents than do cases in which the viewability of the targeted station is not in dispute.

The focal point of the Petition is signal strength evidence. In 66 percent of the 41 Communities, the signal strength of WTVH is -100 dBm or worse. In 83 percent of the communities, the signal strength is -90 dBm or worse. These signal strength values are decisional. Where they obtain, WTVH cannot continue to be classified as significantly viewed.

## **REGULATORY FRAMEWORK**

1. *The Localism Core.* Television stations are 'local' enterprises, but not in the way the corner grocery is local. The character of a television broadcast enterprise is determined by regulatory, demographic, market, engineering and other forces that render it a unique business type. In the broadcast context, 'local' does not denote a point on a map but rather an ordering principle — Localism — which strongly orients television broadcasters to their communities. By statute and FCC regulation, television broadcasters serve as trustees. Use of the spectrum licensed to them entails obligations of responsiveness to the unique interests and needs of the particular communities they serve.

The FCC's technical rules define the contour and intensity of a television station's viewable signal, thereby delimiting a broadcaster's primary local service area. Territorial exclusivity rules restrict the local geography in which a television station can secure exclusive program distribution rights. Ownership rules proscribe in general the ownership or control of more than one television station licensed in the same market area. The main studio rule establishes a further ground of connectedness to the local community.

The ultimate piece in a jigsaw puzzle achieves the puzzle's purpose precisely because its shape is ordained by the pattern of surrounding pieces. Just so, the tightly dimensionalized Localism model supports the promised potential of local television. Broadcasters who magnify the Localism Core achieve deep instantiation in their communities. Year after year, generation after generation, they are 'there' in the fabric of lived experience. Their presence and voice in the community are constants, contributing in unique ways to the rhythms of day to day life. Television stations motivated by Localism are trusted, looked-to, and counted-on by residents of the community. This stewardship orientation generates a kind of heightened intelligence: Broadcasters who embrace their role as stewards have greater perspicuity and discernment concerning the interests and needs of the local community because local states of affairs are of genuine concern to them, and that concern is reflected in their stations' programming.

United is a sterling example of an FCC licensee that embodies these qualities. Since 1981, when United acquired WWNY-TV, the station has exemplified United's corporate mission to "enrich local communities."

Indeed, WWNY-TV has, since its first day of operation, produced local newscasts and has continuously held the number one spot in area Nielsen ratings by a wide margin. Even when faced with increased competition from cable and from a second commercial television station which started broadcasts in 1989, WWNY-TV has maintained its commanding ratings margins. It is often ranked as one of the most watched CBS affiliates. In particular, its 6 pm newscasts stand out as one of the most highly rated local news programs in the nation. Despite the station's small market size, it has won numerous awards for its local news coverage and public service from such organizations as the Associated Press, the Syracuse Press Club and the New York State Broadcasters Association. These include:

2013 Business of the Year, celebrating 60 Years of Service –  
Greater Watertown Chamber of Commerce

Numerous Awards from the New York State Broadcasters  
Association over the years for Outstanding Spot News Coverage,  
Outstanding News Series, and the following:

2016 - Serving New York Award  
2016 - Outstanding Public Service  
Announcement/Campaign  
for Victims Assistance Center  
2004 - Outstanding Public Affairs Series  
2004 - Outstanding Public Affairs Program  
1998 - Outstanding Individual Program or Series for  
Children  
1997 - Outstanding Documentary Program

Numerous Awards from AP, including:

2015 1st place Best News Website Award  
2011- 1<sup>st</sup> place General Excellence in Reporting  
2009- 1<sup>st</sup> place in Spot News Coverage

Syracuse Press Club:

1998 Best Public Affairs Program  
1998 Best Investigative Reporting

Currently WWNY-TV is the only station with a full-time news staff located within the DMA. Remarkably, it produces and broadcasts nearly 20 hours of local news each week. North Country viewers rely on the station not only for its extensive local news coverage, but also for its weather forecasts and emergency information. This is especially important during the winter months when the area is affected by dramatic “lake effect” storms off Lake Ontario producing snowfalls that are often measured in terms of feet rather than inches.<sup>9</sup>

United’s commitment to the local community can be seen by its hosting of local political debates, its investments in station infrastructure such as backup generators for broadcasts during power outages and emergency situations, and in electronic news-gathering equipment that permits the station to cover live breaking events from multiple locations, and most importantly a professional news staff of a size and quality rarely found in this small a market.

WWNY-TV supports the local economy with a strong platform for local advertisers to reach their customers and to promote their businesses. The station also dedicates countless on-air hours to public service, supporting non-profits and local service organizations.

2. *The Television Business Model.* Every business model is implicitly an account of projected human interactions. Fundamental to local television's stewardship model is a certain resonance between the audience and station. The model's effectiveness depends not only on a television broadcaster's patterns of action over time, but on reciprocal patterns of local audience response based on their perception of the broadcaster's brand identity among a variety of media alternatives. This dynamic directly affects a station's ability to generate revenue. Unlike cable, satellite, and other vendors of video programming, the television model is not subscription-based. Instead, television station revenue is mainly a function of the sale of advertising time. The advertising rates that a station can charge are wholly dependent on viewership. Viewership, in turn, depends on the quality and appeal of programming. Therefore, programming and the audience shares that such programming can attract are the lifeblood of the Localism model.

Exceptional small market stations such as WWNY-TV often achieve high audience shares for their local news and sports programming. However, it is only possible to fill so many hours of the day with locally-produced programming. In general, the most-watched entertainment programs owe their

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<sup>9</sup> The North Country encompasses the northern frontier of New York, bordering Lake Ontario on the west, the Saint Lawrence River and the Canadian provinces of Ontario and Quebec on the north and northeast, and Lake Champlain and Vermont on the east. The region is at once the most sparsely populated in New York and geographically the largest. WWNY-TV serves the bulk of this area, roughly everything west of the summits of the Adirondack Mountains.

provenance to television networks and non-network program syndicators.<sup>10</sup> When stations acquire from those sources the right to broadcast network and syndicated programs, the stations typically negotiate contracts for exclusive distribution in their markets. This contractual exclusivity follows logically from the stewardship model. A station's prospect of establishing a reliable identity depends importantly on the uniqueness that exclusive contractual relationships contemplate.

Stations obtain the right to exhibit network programs by offering audience circulation that is attractive to the network, and by giving up to the network all of the advertising time within those programs, and therefore the bulk of the advertising revenue from the airing of those programs. The local stations are left to do the best they can with sales of spot time adjacent to the network programs. In addition, they must pay the networks increasingly steep "programming fees." In light of the extremely high costs that stations pay for such programming, it is only fair that they be able to receive the benefits of the local exclusivity that is the essence of the network-affiliate relationship.

Likewise, non-network program suppliers grant stations exclusive rights based on the principle that duplication within a station's market would reduce the audience for such programming, and hence the value of the programming to the station. In addition, the value to the syndicator of any "barter" time in a syndicated program is reduced to the extent that the audience of the local station carrying such a program is fractured.

Through these means, the stewardship model is inextricably connected with each station's operational economics. In other words, without program exclusivity, small market stations like WWNY-TV could not afford to employ ample staff to produce their local news and weather programs. The existing level of exclusivity is what has allowed WWNY-TV to survive. To the extent that program exclusivity protections can be strengthened to the levels contemplated by the Commission's rules, stations like WWNY-TV will have added resources with which to improve their local public service programming.

3. *Exclusivity Protection.* The major threat to exclusive distribution comes from cable and satellite companies who frequently import the same desirable network programs and syndicated programs from stations in distant markets. This undermines the exclusivity for which the local station has bargained. The Commission's network non-duplication and syndicated exclusivity rules are designed to counter such an untoward result.

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<sup>10</sup> A network program is "any program delivered simultaneously to more than one broadcast station, regional or national, commercial or non-commercial." 47 C.F.R. §76.5(m). A syndicated program is "any program sold, licensed, distributed, or offered to television station licensees in more than one market within the United States, other than as network programming as defined in §76.5(m)." *Id.* at §76.5(ii).

The network non-duplication rules protect a local television station's right to be the exclusive distributor of network programming within a specified zone, and require programming subject to the rules to be blacked out on request when carried on another station's signal imported by a cable operator into the local station's zone of protection.<sup>11</sup> A television station's rights are governed by the contractual agreement between the station and the holder of the rights to the program. The rules allow stations to protect the exclusive distribution rights they negotiate with broadcast networks, not to exceed a geographic zone of 35 miles or 55 miles for network programming in smaller markets such as Watertown-Carthage.<sup>12</sup> The syndicated exclusivity rules allow a station to protect exclusive distribution rights within a 35-mile zone surrounding the station's city of license.<sup>13</sup>

4. *Service Contour Exception.* Under 47 C.F.R. §76.106(a) — with respect to syndicated exclusivity only — a distant signal is not required to be deleted where the "cable community unit falls, in whole or in part" within the distant station's "Grade B" contour. Following the digital conversion deadline, the Commission has treated a digital television station's noise-limited service contour as equivalent to the Grade B contour referenced in the Rule's text. *See Estes Broadcasting, Inc.*, 25 FCC Rcd 7956, 7956 n. 2 (MB 2010). The seven locations identified in Table 2 fall within the 41 dBμ contour of WTVH.

5. *The Significantly-viewed Exception.* A television station's signal (*qua* waveform) is not constrained by the formal boundaries of a market area. Consequently there are instances in which a distant station's signal is viewable over-the-air in a community outside the station's defined service area. When the signal of an out-of-market station is viewable in a particular community and the viewership there is 'significant,' the station is a candidate for significantly viewed status.<sup>14</sup> Under 47 C.F.R. §§76.92(f) and 76.106(a), a cable operator is not required to delete the duplicated network or syndicated

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<sup>11</sup> See 47 C.F.R. §§76.92 and 76.122.

<sup>12</sup> See 47 C.F.R. §§76.92 and 76.120.

<sup>13</sup> Because WWNY-TV is a 'smaller television market' facility, its protected zone to enforce network program exclusivity has a radius of 55 miles from the station's reference point coordinates. [47 C.F.R. § 76.92](#). Note; see [47 C.F.R. § 76.5\(h\)](#) (defining 'smaller television market' as the specified zone of a commercial television station licensed to a community that is not listed in [47 C.F.R. § 76.51](#) (the list of the top 100 television markets)). WWNY-TV's protected zone for syndicated programs has a radius of 35 miles. The 55 and 35 mile zones, as well as all other mileage zones used in applying the exclusivity rules, are measured from the station's "reference point" coordinates. Reference points are found at [47 C.F.R. § 76.53](#).

<sup>14</sup> The regulatory implications of significantly viewed status have been understood in various ways since the FCC created the significantly viewed concept in 1971. But the concept always and only has been invoked when the over-the-air signal of a distant station is viewable in a subject community.

programs of distant stations whose level of viewership has been determined by the FCC to be "significant."

The concept of a television station's being significantly viewed thus requires two elements: 'viewability' and 'viewership.' The 'viewability' of a distant signal is a matter of physics and engineering. It is a technical issue. 'Viewership' refers to the size of the audience that a distant station realizes in a community over the air when its signal is viewable there in the first instance. A distant station's status as 'significantly viewed' thus denotes that the station's signal is viewable in the community and that the station's viewership there is 'significant'.

A. Viewability. Viewability relates to a household's ability to receive the over-the-air signal of a distant station. This reception occurs, broadly speaking, when the signal at that location is of a particular minimum strength. When the quality of the signal at the viewer's receive antenna is sufficient for the signal to be acquired and the signal level at the input terminal of the receiver is sufficient for 'television service,' the signal is 'viewable' as we define the term for present purposes.

Interrelated variables affect signal strength. In order for that gestalt to hold (*i.e.*, 'television service' in a given case occurs) adjustments to one or more variables require correlative adjustments to others.<sup>15</sup> Moreover, like all phenomena explained by physics, the dynamics affecting signal strength range within certain limits.<sup>16</sup>

An upshot of these dimensions of signal propagation and reception is that the conditions under which a signal will be viewable are specifiable. They can be modeled in computer programs and standardized in regulations. The Commission's Technical Rules define the conditions under which 'television service' can reliably be predicted to occur.<sup>17</sup>

The event of reception of a viewable signal involves a receive antenna's 'locking onto' the radiated signal, the signal's subsequent conversion to a usable form of energy (electrical) as it is transmitted to a receiver input terminal, and the signal's then being re-encoded into the intelligible information that

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<sup>15</sup> For example, receive antennas are designed with varying amounts of antenna gain or directivity. The greater the gain of the antenna, the greater the antenna's ability to capture weak signals. However, there is a significant tradeoff when incorporating additional gain in an antenna design – namely, the design must include a narrower beam width. The narrower the beam width, the more critical it is to aim the antenna accurately at the source of the signal of interest.

<sup>16</sup> Signal-to-noise ratio is the fundamental limit to the range of radio or television communication, as it is for any mode of communication including a conversation in a noisy restaurant. The service areas of television stations are defined on the basis of this concept, termed "noise-limited" service in the Commission's Rules.

<sup>17</sup> See [Section II\(B\)](#), *infra*.

constitutes a television picture. For that outcome to manifest, the signal at the receiver input terminal must have a level of strength at least sufficient to overcome the inherent ‘noise’ in the receiving system. For stations operating on UHF channels, like WTVH, the signal strength must be -84 dBm or greater.

‘Field strength’ is a characterization relevant to the other end of the receiving system. It refers to the intensity of the electromagnetic field generated in the transmission of the signal by the station. The field intensity necessary at a household’s receive antenna (where the signal is captured in the first instance) is calculated by ‘working backwards’ from the signal strength required at the receiver input terminal.<sup>18</sup>

Field strength is expressed in decibels above one micro-volt per meter, or dBμ. The minimum field strength required for digital television coverage in the UHF band is 41 dBμ.

In this Petition, graphics for signal contour maps will indicate measurements in dBμ. References to signal strengths will be measurements in dBm.

B. ‘Significant’ Viewership. Viewership is a function of the viewing behavior of television audiences. To ascertain which viewable signals are actually viewed, patterns of viewing are determined by surveys. The surveys are translated into statistical profiles of two categories. Viewing ‘share’ is a percentage of total viewing hours of a station in the community. Net weekly circulation (‘cume’) is the percentage of television households that view a station five minutes or more per week.<sup>19</sup> Viewership of a network station is ‘significant’ when the viewing share is at least 3 percent and net weekly circulation is at least 25 percent. The reference class is “over-the-air television homes.”<sup>20</sup>

It is crucial to the coherence of significantly viewed determinations that the viewability of a station’s signal is accounted for, as well as the station’s measured viewership. This principle has undergirded the Commission’s reasoning from the advent of the significantly viewed concept. When the FCC established the criteria that would define ‘significant’ viewing, it emphasized that the significantly viewed standard was intended to capture both viewability and viewership:

The two criteria reflect distinct concepts. Net weekly circulation . . . tends largely to reflect *the availability or viewability of a signal as a technical matter*. Audience share indicates *the intensity of viewer interests*. The

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<sup>18</sup> Specifically, “the minimum field strength needed to be available at the antenna is the sum of the minimum signal level needed at the receiver, the download line loss, and the dipole factor, less the antenna gain”. *Report to Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004. Study of Digital Television Field Strength Standards and Testing Procedures*, ET Docket No. 05-182, released December 9, 2005, ¶15.

<sup>19</sup> See 47 C.F.R. § 76.5(i) (required audience levels for significantly viewed status).

<sup>20</sup> See [47 C.F.R. §76.54\(b\)](#) (Significant viewing . . . may be demonstrated by an independent professional audience survey of over-the-air television homes . . . )

combination of these two criteria provides greater assurance that the signal meeting the test is in fact significantly viewed.<sup>21</sup>

Thus, if a Nielsen statistic indicates that a distant station is significantly viewed in a community, it can be inferred that the signal of the station is viewable over-the-air in that community. And in the event the signal of a distant station is *not* viewable in a particular community – for example, due to a technical modification – the Nielsen study ordinarily would account for this as well. Because the station could not have viewership in the community if its signal were not viewable there, its viewership would register as zero (zero ‘cume’ and zero ‘share’). These considerations underscore that the viewability of a distant station’s signal is always relevant.

C. The Significantly Viewed List. The significantly viewed status of most television stations derives from audience surveys conducted in 1970-71 by American Research Bureau (later ‘Arbitron’) and incorporated by the Commission into its 1972 Significantly Viewed List.<sup>22</sup> One particular aspect of the original significantly viewed study is pertinent. The Arbitron studies on which the 1972 Significantly Viewed List was based included a presumption that if a television station were significantly viewed in one community in a county, it was significantly viewed in all communities in that county. The Commission acknowledged this as a limitation when the original list was adopted but accepted the sue of county-wide data because of the motivating exigency of the period, which was to stimulate the evolution of cable. That policy objective “outweighed the benefits that would result from waiting for more accurate community by community data, which was not available at the time.”<sup>23</sup>

As noted, the Commission has held for many years that the signals of television stations on the Significantly Viewed List are viewable over-the-air in the counties and communities the List specifies.

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<sup>21</sup> *Cable Television Report and Order*, 36 FCC 2d 143, ¶84 (1972), emphasis added.

<sup>22</sup> See *Community Antenna Television Systems (Reconsideration)*, 36 FCC 2d 326, App. B (1972). Section 340(c)(2) of the Communications Act requires that the Commission's website host a [current list of all significantly viewed stations](#) (Significantly Viewed List or SV List). This consists of the 1972 SV List as amended over time *via* additions of stations since found to be significantly viewed, as well as annotations to the SV List showing certain stations as no longer significantly viewed in specific communities as determined case by case. Stations with a plus sign (+) under individual counties are those stations added to the SV List after the Commission’s original 1972 compilation. Stations with a pound sign ( ) are subject to programming deletions in the communities indicated.

<sup>23</sup> *Scranton Broadcasters, Inc.*, 88 FCC 2d 1482, ¶ 12 (1982).



“We do not believe there is any serious dispute that, with very few exceptions, the signals in question are available over-the-air to individuals with rooftop antennas.”<sup>24</sup>

6. *Waiver of the Significantly-viewed Exception.* A distant station’s having significantly viewed status substantially alters the rights and obligations that underpin a local broadcaster’s stewardship responsibilities. The Localism model entails a tightly configured state of affairs: Aberrations to its natural dynamics threaten its proper functioning.<sup>25</sup> This threat is magnified when the distant station is a belongs to one of the top 100 markets, while the local station is in a very small television market, as in the present case:<sup>26</sup>

For this reason, the immunity afforded by the Significantly Viewed Exception is predicated on a strict empirical reality – namely, that the signal of a distant station is viewable over-the-air in the cable community and the station’s viewership there is ‘significant’ in that it is consistent with viewing levels of physically local stations. If that empirical reality is not extant – either because the distant signal is not viewable in the cable community or because the distant station’s audience is not significant – then the Significantly Viewed Exception does not apply.

7. *The Waiver Procedure.* The procedures for obtaining a waiver of the Significantly Viewed Exception derive from *KCST, Inc. v FCC*.<sup>27</sup> In that case, the United States Court of Appeals for the District of Columbia Circuit explained that the key focus in significant viewing waiver evaluations should be the status of “the underlying premise” of the rule. If the state of affairs presupposed by the rule has lapsed or is otherwise not extant, the rule “has no logical application” and “there is no apparent rationale for not granting a waiver.”<sup>28</sup> This includes cases in which a signal is not viewable. “For

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<sup>24</sup> *Network Program Exclusivity Protection by Cable Television Systems (Reconsideration)*, 68 FCC 2d 1461, ¶20 (1978); see also *Desert Empire Television Corp.*, 86 FCC 2d 644, ¶10 (1981).

<sup>25</sup> See, e.g., *Retransmission Consent*, MB Docket No. 10-71 (NAB analysis finding that when a local broadcast station regains program exclusivity by overcoming an out-of-market station’s significantly viewed status, its ratings increase by a statistically and economically significant amount).

<sup>26</sup> See, e.g., *Network Program Exclusivity Protection by Cable Television Systems*, 62 FCC 2d 99 (1976), ¶7 (“Basic to any issue in the network non-duplication area is the danger of adverse impact on the ability of television stations to perform their public service obligations. Moreover, when there is a risk of injury of broadcast service to the public, it is appropriate to consider and balance that risk against the value of whatever additional service cable subscribers may be receiving”).

<sup>27</sup> 699 F.2d 1185 (D.C. Cir. 1983).

<sup>28</sup> *Ibid.*

example, if a station's viewership in a county falls to nearly zero because of changes in its signal, . . . it is obviously illogical for the Commission to deem the station significantly viewed.”<sup>29</sup>

On remand from the Court of Appeals, the Commission established the procedure by which a petitioner might present viewing data demonstrating that the underlying premise of the Significantly Viewed Exception is not extant – *i.e.*, that the distant station is not in fact significantly viewed in the community in question.<sup>30</sup>

The showing has two elements. The first element limits the reference class to “over-the-air television homes” – households whose television viewing occurs by use of an antenna that captures the propagating signal of the distant station. This constraint anchors the waiver procedure to one of the empirical presuppositions of the Significantly Viewed Exception – namely, that the signal of the distant station is sufficiently strong to be acquired by television receive antennas in the cable community under consideration.

The second element concerns the level of viewership the viewable signal attracts in the cable community. Whether or not that level is ‘significant’ depends on its evaluation under [47 C.F.R. §76.5\(i\)](#). This constraint anchors the waiver procedure to the other empirical presupposition of the Significantly Viewed Exception – namely, viewing of the distant station’s programming is ‘significant.’

If either of the empirical premises underlying the Significantly Viewed Exception is missing, it cannot be sustained. If the signal of the distant station is not actually viewable over-the-air in the cable community, the station cannot hold significantly viewed status. Alternatively, if a signal is viewable in the cable community, but the signal is not ‘significantly’ viewed there, the station cannot hold significantly viewed status.

### **NIELSEN STUDIES**

Section 76.54(b) of the Rules requires that showings relating to significantly viewed status be based on an independent professional audience survey. The Nielsen Company, which routinely surveys television markets to obtain television station viewership, conducts four-week audience surveys four times a year (the February, May, July and November “sweep periods”). Petitioners who wish to demonstrate a lapse in significant viewing levels may submit the Nielsen results from two sweep periods in each year, one of which must be outside the months of April through September.

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<sup>29</sup> *Ibid.*

<sup>30</sup> *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986).

The Commission requires that two separate surveys be performed in consecutive years. The provisions of Section 76.54(b) therefore apply to each year's survey. Within a given year, a petitioner may submit the average of two sweep periods. In the instant case, data in the Nielsen Study were compiled based on Nielsen Station Index surveys conducted over four-week periods during February and November 2014 and February and May 2015 in non-cable, non-satellite homes. The report comprises [Exhibit 1](#), along with Nielsen's methodology statement.

Nielsen's methodology in this context relies on zip codes, which appear under the category "geographical grouping" in Nielsen's reports.<sup>31</sup> Zip codes and community names are not synchronized unilaterally by Nielsen. Rather, it uses the zip codes provided by the petitioning television station when Nielsen is engaged to generate a report. The FCC approves of Nielsen's sample-selection "identifying the communities by zip codes" as an aspect of "sound statistical techniques" and "consistent with surveys found acceptable."<sup>32</sup> A zip code is a U.S Postal Service designation that serves primarily a logistics function for local mail delivery. In order to guide the timely and accurate delivery of mail even when a sender may have been imprecise about the appropriate zip code on a piece of mail, the Postal Service builds redundancy into its zip code schema. A single zip code might be associated with an area that covers more than one community, and some communities are assigned more than one zip code. Because Nielsen relies exclusively on zip codes to identify communities, ambiguity can arise in the interpretation of Nielsen studies in the context of waiver showings. Here again, the Commission's approach is reasonably pragmatic and takes notice of clarifying contextual information.

'Community.' Community-specific petitions for waiver of significantly viewed status require not only that correlations between zip codes and community names are valid, but also that a community name refers to a "cable television community."<sup>33</sup> Under Section 76.5(dd) of the Rules, a community unit is "[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas)." This 'community or municipal entity' is associated with a Community Unit Identifier Number (CUID) at the time the cable

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<sup>31</sup> Zip codes "have generally been found to be a good method for identifying cable communities of interest for the purpose of Nielsen's re-tabulation of its existing data." *Gray Television Licensee, LLC*, DA 15-257, *rel.* Feb. 25, 2015 (MB), at ¶20.

<sup>32</sup> *Silverton Broadcasting Company, LLC*, DA 15-741, *rel.* June 25, 2015 (MB), at ¶ 5.

<sup>33</sup> 47 C.F.R. §76.54(b).

unit is registered with the FCC.<sup>34</sup> These data are retrievable through the Commission's COALS database.

Summarizing Points 3 and 4: Valid waiver showings require correlations over zip code, community and cable "community unit." The most straightforward of these patterns would be a reflexive 1:1 mappings of the form:

Zip Code ↔ Community ↔ Cable Community Unit ID(s)

where the bidirectional arrows indicate that the zip code and community name are associated uniquely with each other and the community name and CUID(s) are likewise uniquely associated. The ambiguity alluded to in Point 3 can be magnified because cable franchise areas are generally defined by the jurisdictional boundaries of the community awarding the franchise.

In combination, these factors occasionally complicate the correlation of zip code, community and cable operation data upon which waiver showings are predicated. The Commission recognizes, however, that there is not always perfect synchrony on this score, given the different purposes for which these classifications originally were created. In those instances, a common sense approach considering the relevant evidence is required to reach a conclusion that is pragmatically appropriate.

### **VIEWABILITY ANALYSIS**

1. *Methodological Orientation.* Our orientation in composing the Viewability Table was to condition for the most optimistic predictions from the perspective of WTVH. There are two sets of signal strength values found in the table, one generated by the Commission's [DTV Reception Tool](#)<sup>35</sup> and the other by the highly-respected [Signal Analysis Tool](#).<sup>36</sup>

In both cases the computational engine of the calculations is a version of the Longley-Rice Irregular Terrain model. The calculations assume an outdoor antenna 30 feet above ground level, the typical height of a rooftop antenna. The predictions are terrain-sensitive but the models do not account for building construction, neighboring buildings and trees, weather, and other factors that generally would affect the probability of reception negatively were they considered (*i.e.*, the results would be less

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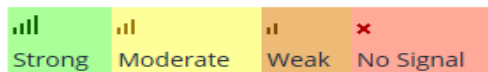
<sup>34</sup> 47 C.F.R. §76.1801.

<sup>35</sup> The DTV Reception Tool is found at <https://www.fcc.gov/media/engineering/dtvmaps>. The Commission recommends "us[ing] this program to check for the DTV signals that are available at your location." *Ibid.*

<sup>36</sup> The Signal Analysis Tool is found at [http://www.tvfool.com/?option=com\\_wrapper&Itemid=29](http://www.tvfool.com/?option=com_wrapper&Itemid=29).

optimistic from the point of view of WTVH). Interference is not accounted for. If it were, the predictions would be still less optimistic.<sup>37</sup>

The DTV Reception Tool returns results in four viewability categories which the Commission identifies by this color scheme:



As explained, under the FCC’s digital television standards for viewability, the minimum signal level required at the input terminal of a television receiver is -84.0 dBm for UHF channels.<sup>38</sup> In the DTV Reception Tool color scheme, signal levels worse than -86 dBm are classified by the FCC as ‘No Signal’ (red). For signals classified as ‘Weak’ (brown), the levels generally fall between -79 dBm and -86 dBm, as the DTV Reception Tool demarcates them.<sup>39</sup> In the Viewability Table we have extended the same color scheme logic to the second set of signal strength values. The cells colored blue signify that the communities are within the radio horizon and noise-limited contour of WTVH.

## 2. Viewability of WTVH

The Viewability Table shows the predicted signal strength for WTVH at each of the zip code locations identified by Nielsen. The Table also indicates the coordinates of each location, the transmitter coordinates of WTVH, and the distance in miles between the communities and the station’s transmitter site. In the column showing the signal strength values generated by the Commission’s DTV

<sup>37</sup> In addition, DTV service is subject to a ‘cliff effect.’ A very small marginal decrease in signal strength causes full-quality service to become suddenly unavailable. This phenomenon is a further limiting consideration with respect to the range of viewability predictions for digital signals as compared with their analog antecedents.

<sup>38</sup> *Report to Congress, The Satellite Home Viewer Extension and Reauthorization Act of 2004, Study of Digital Field Strength Standards and Testing procedures*, ET Docket No. 05–182, released December 9, 2005, at ¶18: “In their comments, ABC, CBS, and NBC Television Affiliate Association (Network Affiliates) state that the Commission’s planning factors established appropriate signal strength thresholds for reception of **real-world DTV signals**. These planning factors, Network Affiliates assert, contain a ‘safety margin’ to ensure that quality DTV reception is achievable precisely where the Commission expects it to be, namely, in the replicated analog TV service area.” (emphasis added).

<sup>39</sup> It is the nature of television signal propagation that the availability of television service at particular locations is inherently probabilistic. As noted earlier, the service area of a DTV station is the geographic area within the station’s noise-limited contour where its signal is predicted to exceed the noise-limited service level. The noise-limited contour is characterized by a two-valued probability function – written “F(50, 90)” – that describes the outer edge of a region in which signal strength is predicted to exceed the field strength standard at 50 percent of the potential receive locations 90 percent of the time. Television service is considered ‘available’ at locations where the station’s signal strength exceeds the noise-limited service levels described herein. The predictions assume the use of the terrain dependent Longley-Rice point-to-point propagation model. See 47 C.F.R. §73.622(e)(1).

Reception Tool, the symbol '>dBm' indicates cases in which WTVH does not appear at all in the results because its predicted signal is too weak. The column showing values generated by the Signal Analysis Tool includes the predicted signal strength in all cases.

Because Nielsen studies report viewership according to zip codes, we have organized the Viewability Table likewise. Some zip codes have more than one town, village, hamlet or census-designated place associated with them. These are reflected in Table 1. Conversely, several FCC-designated cable communities encompass more than one zip code. These are sorted in Table 6, below. By '41 Communities' we mean the 41 Cable Communities identified in the FCC's COALS database in Jefferson County.

**Table 1**

**Viewability of WTVH in Jefferson County Zip Code Communities**

Watertown DMA Jefferson County			Syracuse DMA	
Zip code	Community	Community Coordinates	WTVH 42.955222 -76.109528	
			DTV Reception Tool	Signal Analysis Tool
13601	Watertown	43.975556 -75.906389	> dBm 71.2 miles	-114.8 dBm 71.1 miles
	Glen Park	43.998889 -75.952222	> dBm 72.5 miles	-107.3 dBm 72.6 miles
13602	Fort Drum	44.038056 -75.758056	> dBm 76.8 miles	-116.6 dBm 78.3 miles
13603	Fort Drum	44.038056 -75.758056	> dBm 76.8 miles	-114.8 dBm 71.1 miles
13605	Adams (Village)	43.81 -76.023889	-85 dBm 59.2 miles	-85.8 dBm 59.1 miles
13606	Adams Center	43.862222 -76.006944	-90 dBm 62.7 miles	-91.7 dBm 62.7 miles

Watertown DMA Jefferson County			Syracuse DMA	
Zip code	Community	Community Coordinates	WTVH 42.955222 -76.109528	
			DTV Reception Tool	Signal Analysis Tool
13607	Alexandria	44.316667 -75.883333	> dBm 94.7 miles	-110.0 dBm 95.4 miles
13608	Antwerp	44.201944 -75.615833	> dBm 89.6 miles	-108.2 dBm 90.8 miles
13611	Belleville	43.783333 -76.119444	-68 dBm 57.2 miles	-70.6 dBm 57.2 miles
13612	Black River	44.011667 -75.794722	-91 dBm 74.6 miles	-121.1 dBm 74.7 miles
13615	Brownville	44.002222 -75.983056	-97 dBm 72.6 miles	-103.6 dBm 72.9 miles
13616	Calcium	44.034722 -75.842222	> dBm 75.7 miles	-112.4 dBm 74.8 miles
13618	Cape Vincent	44.127778 -76.333333	-99 dBm 81.7 miles	-106.5 dBm 81.7 miles
13619	Carthage	43.981111 -75.606944	> dBm 75.2 miles	-110.4 dBm 75.0 miles
	Wilna	44.018056 -75.596944	> dBm 77.8 miles	-108.0 dBm 80.9 miles
	West Carthage	43.973611 -75.621389	> dBm 74.5 miles	-108.6 dBm 74.6 miles
	Champion	43.966667 -75.683333	> dBm 73.0 miles	-127.6 dBm 72.9 miles
13622	Chaumont	44.067222 -76.133889	-90 dBm 76.8 miles	-91.3 dBm 76.8 miles
13624	Clayton	44.1753 -76.0711	> dBm 84.3 miles	-108.2 dBm 88.7 miles
13628	Deferiet	44.034167 -75.682778	> dBm 77.6 miles	-115.1 dBm 77.6 miles
13632	Depauville	44.143056 -76.057778	> dBm 82.0 miles	-118.1 dBm 81.7 miles

Watertown DMA Jefferson County			Syracuse DMA	
Zip code	Community	Community Coordinates	<b>WTVH</b> 42.955222 -76.109528	
			DTV Reception Tool	Signal Analysis Tool
13634	Dexter	44.008333 -76.045278	-95 dBm 72.8 miles	-93.8 dBm 72.7 miles
13636	Ellisburg	43.733333 -76.133333	-88 dBm 53.8 miles	-78.9 dBm 54.2 miles
13637	Evans Mills	44.088611 -75.807222	> dBm 79.7 miles	-117.0 dBm 79.7 miles
	LeRay	44.076111 -75.808889	> dBm 78.8 miles	-112.8 dBm 80.1 miles
	Pamelia	44.041389 -75.894722	> dBm 75.6 miles	-109.9 77.6 miles
13638	Rutland	43.959722 -75.794167	> dBm 71.1 miles	-100.9 dBm 70.0 miles
13640	Wellesley Island	44.316667 -76	> dBm 94.2 miles	-105.2 dBm 93.1 miles
	Fineview	44.287 -76.012	> dBm 92.1 miles	-107.7 dBm 92.1 miles



Watertown DMA Jefferson County			Syracuse DMA	
Zip code	Community	Community Coordinates	WTVH 42.955222 -76.109528	
			DTV Reception Tool	Signal Analysis Tool
13641	Fishers Landing	44.272778 -76.000278	> dBm 91.1 miles	-110.6 dBm 91.3 miles
13643	Great Bend	44.036389 -75.708333	> dBm 77.3 miles	-101.4 dBm 77.0 miles
13650	Henderson	43.849444 -76.189167	-75 dBm 61.9 miles	-72.9 dBm 61.7 miles
	Woodville	43.754444 -76.165278	-69 dBm 55.2 miles	-73.2 dBm 55.2 miles
13651	Henderson Harbor	43.864 -76.201	-80 dBm 63.0 miles	-98.7 dBm 63.0 miles
13656	Orleans	44.244167 -75.976944	-98 dBm 89.2 miles	-105.3 dBm 85.3 miles
13657	Limerick	44.029 -76.042	-91 dBm 94.2 miles	-95.2 dBm 74.2 miles
13659	Lorraine	43.753056 -75.977778	-82 dBm 55.5 miles	-86.8 dBm 56.5 miles
13661	Mannsville	43.711389 -76.064167	-55 dBm 52.3 miles	-56.3 dBm 52.3 miles
13665	Natural Bridge	44.068611 -75.494722	> dBm 82.8 miles	-111.1 dBm 82.9 miles
13671	Oxbow	44.287 -75.622	> dBm 95.1 miles	-122.3 dBm 95.1 miles
13673	Philadelphia	44.154 -75.708	> dBm 85.2 miles	-112.0 dBm 85.2 miles
13674	Pierrepont Manor	43.735 76.058889	-67 dBm 53.9 miles	-71.9 dBm 53.9 miles
13675	Plessis	44.270278 -75.854444	> dBm 91.7 miles	-104.4 dBm 91.7 miles

Watertown DMA Jefferson County			Syracuse DMA WTVH 42.955222 -76.109528	
Zip code	Community	Community Coordinates	DTV Reception Tool	Signal Analysis Tool
13679	Redwood	44.300833 -75.800556	> dBm 94.2 miles	-110.8 dBm 94.2 miles
13682	Rodman	43.850833 -75.915556	> dBm 62.6 miles	-101.2 dBm 62.4 miles
13685	Hounsfield	43.946111 -76.079167	-91 dBm 68.4 miles	-98.0 dBm 68.8 miles
	Sacketts Harbor	43.95 -76.116667	-93 dBm 68.7 miles	-94.5 dBm 68.4 miles
13691	Theresa	44.216667 -75.794722	> dBm 88.5 miles	-111.6 dBm 88.4 miles
13692	Thousand Isl. Park	44.286 -76.027	> dBm 92.0 miles	-107.8 dBm 92.0 miles
13693	Three Mile Bay	44.081389 -76.198333	-87 dBm 77.9 miles	-91.1 dBm 77.9 miles

### 3. The FCC's Findings in MB Docket No. 15-43

The information yielded by the Viewability Table is consistent with the FCC's findings in *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014* (MB Docket No. 15-43), Report, released June 3, 2016 ('*2016 Report to Congress*').<sup>40</sup> In Section 109(a) of the statute, STELAR, Congress directed the Commission to "analyze the extent to which consumers in each local television market have access to . . . out-of-market television stations received over the air."<sup>41</sup>

The FCC explained its methodology for assessing viewability as follows:

The data set forth in this Report are based on [the Longley-Rice propagation model] . . . regarding the availability of broadcast stations received over the air predictive model regarding the availability of broadcast television stations via

<sup>40</sup> *Designated Market Areas: Report to Congress Pursuant to Section 109 of the STELA Reauthorization Act of 2014*, MB Docket No. 15-43. 31 FCC Rcd 5463, n. 55 (2016) ("*2016 Report to Congress*"). 'STELA' is the Satellite Television Extension and Localism Act of 2010; 'STELAR' is the STELA Reauthorization Act of 2014.

<sup>41</sup> *Id.* at ¶38 and n. 125, and ¶40.

over the air transmission . . . [W]e believe this approach yields the most accurate data with respect to the analysis required by Section 109(a)(1)(A).<sup>42</sup>

List 5 in Appendix A of the *2016 Report to Congress* “provides a complete listing of every out-of-market full power broadcast television station, commercial or noncommercial, that can be received over the air.”<sup>43</sup> According to List 5, Appendix A, the signal of WTVH reaches 7 percent of the population of Jefferson County. The population of Jefferson County is 114,006 (2016). Seven percent of that figure is 7980.

We showed in Figure 1 the seven communities falling within the noise-limited contour of WTVH in Jefferson County. These are: Henderson (pop. 1352), Belleville (pop. 226), Ellisburg (village pop. 239; town population 3,474; total 3,713), Lorraine (pop. 1023), Adams (pop. 5094), Pierrepont Manor (pop. 228), and Mannsville (pop. 347). The total population of these communities is 8509, which is in harmony with the 7 percent figure (7980) the FCC estimated in the *2016 Report to Congress*.

#### 4. *Explaining WTVH’s Significantly Viewed Status in the First Instance*

In Arbitron’s original methodology, if a station was determined to be significantly viewed in one community in a county, it was deemed to be significantly viewed in all communities in the county.

The signal of WTVH was not historically able to reach most of the communities in Jefferson County, and it does not do so today. (Because of the ‘digital cliff’ there is even less chance of distant viewing now than then.) As explained above, by the Commission’s calculation the WTVH signal today reaches 7 percent of Jefferson County. But a consequence of the original Arbitron methodology was that WTVH acquired significantly viewed status throughout the entire county. This status having been incorporated in the 1972 Significantly Viewed List was transmitted through time.

This state of affairs illuminates the nature and magnitude of the challenge that has perennially confronted WWNY-TV. WTVH, by virtue of its presence on the Significantly Viewed List, acquired substantial legal rights relating to signal carriage. Conversely, by virtue of WTVH’s regulatory status as significantly viewed, the program exclusivity rights of WWNY-TV have been disabled for many years.

Fortunately, the FCC’s Waiver Procedure is available. This was a failsafe the Commission sanctioned from the beginning. In testimony to Congress just prior to the seminal 1972 proceeding that spawned the Significantly Viewed List, the Commission said:

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Id.* at ¶40.

We should stress that while these policies will generally govern our disposition of cable matters as they come before us, there are always exceptional situations that call for exceptional actions. *The very purpose of an administrative agency is to insure flexibility to act in the public interest in particular situations.* In this area of operation under new policies, we will be alert to such special situations as they arise and will tailor our actions accordingly.<sup>44</sup>

The Waiver Procedure is meant to reveal the underlying empirical reality about contended significantly viewed classifications. Regardless of errors the Significantly Viewed List contains today – either because the original errors have been transmitted through the years or because viewing patterns or demographics have changed – the Waiver Procedure is designed to identify cases in which a distant station should no longer be classified as significantly viewed with respect to a particular community or to confirm that such status properly should continue.

### **EVALUATING THE VIEWABILITY EVIDENCE**

The viewability evidence is reviewed below.

There is a small subset of cases where, according to the values generated by the DTV Reception Tool, WTVH's signal is viewable. As to these cases, the viewability predicate of significantly viewed status should be assumed to be present.

As explained earlier, under the FCC's digital television standards for viewability, the minimum signal level required at the input terminal of a television receiver is -84.0 dBm for UHF channels. Under the Commission's DTV Reception Tool classifications, signal levels worse than -86 dBm generally are classified as 'No Signal' (red). Signal levels between -79 dBm and -86 dBm are classified as 'Weak' (brown). Stronger signal levels are classified as 'Strong' (green) and 'Moderate' (yellow).

The Viewability Table indicates seven cases in which a 'weak' or 'moderate' signal level is predicted. These are shown in Table 2 below, which is based on zip code communities. As set forth in more detail in Table 6, three of the zip codes communities in Table 2 belong to hamlets in the FCC cable community unit of the Town of Ellisburg. (In New York as in New England, the "town" is a geographic and legal construct akin to townships in New Jersey, Pennsylvania and the Midwest, but each town has the ability to grant cable television franchises.) The Village of Ellisburg is a municipality independent of the Town of the same name.

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<sup>44</sup> *Commission Proposals for Regulation of Cable Television*, 31 FCC 2d 115 (1971) (emphasis added). *See also Cable Television Report and Order*, 36 FCC 2d 143, ¶71 (1972) ("As with any general policy, there may well be exceptional cases – as to a particular market or, more likely, a particular station in that market. In such an event, we would be prepared to take appropriate action under the special relief provisions of the rules [citing 47 C.F.R. §76.7]").

**Table 2**

**Cases in which the Commission's DTV Reception Tool  
Predicts Signal Levels Indicative of Viewability of WTVH**

Community	DTV Reception Tool	Signal Analysis Tool
Henderson	-75 dBm	-72.9 dBm
Belleville	-68 dBm	-70.6 dBm
Ellisburg	-88 dBm	-78.9 dBm
Lorraine	-82 dBm	-86.8 dBm
Adams (Village)	-85 dBm	-85.8 dBm
Pierrepont Manor	-67 dBm	-71.9 dBm
Mannsville	-55 dBm	-56.3 dBm

If it is assumed that a signal characterized by the Commission's DTV Reception Tool as 'weak' is a technically viewable signal, the seven cases specified in Table 2 would be provisional instances of viewable signals.

Regarding the remaining cases, the evidence presented is more than sufficient for the Commission to decide that WTVH's signal is not viewable. The viewability evidence is reliable for the following reasons:

- i. The first set of values in the Viewability Table was generated by the Commission's DTV Reception Tool. Underlying the tool is a computer program that executes the terrain-sensitive Longley-Rice propagation model. The quality of the Longley-Rice family of propagation models has been repeatedly confirmed. The predictive accuracy of the model is about 95 percent.<sup>45</sup> Moreover, the correlations of signal strength and viewability that are the outputs of the DTV Reception Tool are codified in the FCC's Rules defining the conditions of television service and coverage.
- ii. The Viewability Table results are consistent with the FCC's findings in the *2016 Report to Congress* as they relate to the viewability of WTVH in Jefferson County.
- iii. The second set of values in the Viewability Table was generated by the Signal Analysis Tool. These calculations are wholly consistent with the values generated by the DTV Reception Tool.

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<sup>45</sup> See, e.g., *Report to Congress, The Satellite Home Viewer Extension and Reauthorization Act of 2004, Study of Digital Field Strength Standards and Testing procedures*, ET Docket No. 05-182, released December 9, 2005, ¶37.

- iv. The results in the Viewability Table are consistent with the propagation distances involved and explain the distance anomalies with which we began.
- v. Our methodological orientation has been to err in favor of the viewability of WTVH's signal. We have gone to lengths to avoid bias.
- vi. In the majority of cases, the signal levels predicted are *far beyond* the limit of dBm values considered adequate for digital television service. There are almost no instances of close questions.
- vii. United has explained why WTVH was placed on the Significantly Viewed List in the first instance. This was a result of the station's being viewable over-the-air in the limited cases we have identified and the then-extant presumption that if a station were viewable in one community in a county, it was viewable in the entire county. In other words, WTVH's significantly viewed status does not denote that there was an original empirical finding that its signal was viewable throughout Jefferson County. Its status does not carry any evidentiary force that is not straightforwardly defeasible by the signal level data set forth here.

These factors are sufficiently varied that the influence of each causes yet a further reduction in the probability that WTVH's signal (excepting in the seven locations noted above) is viewable over-the-air in the Subject Communities. Their summed effect is to reduce that prospect virtually to zero.

As a further gauge of the sufficiency of the viewability evidence to support the FCC action requested here, it is instructive to note the Commission's explanation as to why the evidence generated by viewing surveys is a sufficient predicate for FCC determinations of viewership. The survey methodology is sometimes criticized by opponents of waiver petitions on the ground that it does not involve "a rigorous statistical analysis."<sup>46</sup> The Commission dismisses this criticism.

[T]he procedures for determining significantly viewed status are only intended to *estimate* over-the-air viewing levels . . . [T]hey do not require a sophisticated statistical analysis, but rather constitute *a practical methodology, with reasonable statistical bounds . . . to grant waivers* when significant viewing levels no longer demonstrate that a station is 'significantly viewed' over the air. While it is true that statisticians most frequently use a 95 percent confidence level (i.e., 2 standard errors) to . . . assess the reliability of a reported statistic, Section 76.54 of the Commission's rules sets forth *a lower level of confidence – approximately 68 percent*.<sup>47</sup>

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<sup>46</sup> *Gulf-Coast Broadcast Company and Journal Broadcast Corp.*, 26 FCC Rcd 15027, ¶16 (2011).

<sup>47</sup> *Ibid.* (emphasis added).

In the instant case, the primary question is the viewability of WTVH's signal. On that score the reliability of United's data far exceeds the level deemed adequate for viewership evidence. As noted, the viewability evidence set forth here was generated by a Longley-Rice predictive model considered to be about 95 percent accurate.<sup>48</sup> Over the past 20 years the digital versions of the Longley-Rice models have been studied, scrutinized in multiple Commission proceedings, tested in the lab, refined, tested in the field, deployed in thousands of 'real-world' cases, adopted by numerous federal agencies, and universally adopted by the broadcast industry. The Longley-Rice models are the centerpiece of the Commission's Technical Rules involving field strength and signal level standards. Their use is mandated by Congress in prominent statutes regulating the Communications Industry and by federal courts. On the basis of the data the models produce, the Commission acts to resolve rights in any number of Part 73 and Part 76 issue-areas.

In short, the Commission can be confident that the viewability data justify a finding that WTVH's signal is not viewable over-the-air in the specified communities, and thus that the station should not continue to be deemed significantly viewed in those communities.

## **VIEWERSHIP ANALYSIS**

### *1. Threshold Requirements*

A. Protected Zones. Because WWNY-TV is a smaller market facility, its zone to enforce network program exclusivity extends 55 miles from the station's reference point coordinates. Its protected zone for syndicated programs has a radius of 35 miles. Watertown is within this range.

2. Contractual Rights. United has a network affiliation agreement with the CBS Television Network authorizing carriage of CBS network programming on WWNY-TV. The contract includes a grant of network non-duplication rights to the maximum extent permitted by the FCC's Rules. United is also a party to programming agreements with various providers of syndicated programming. These contracts likewise grant the maximal exclusivity allowed by the Rules.

3. Notice to Affected Parties. United timely notified interested parties pursuant to the requirements of 47 C.F.R. §76.54(c) of its planned acquisition of the Nielsen data that support this Petition.<sup>49</sup>

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<sup>48</sup> In 5 percent of cases the model either over-predicts or under-predicts signal levels at a given location. The proportion of over- to under-predictions is roughly equal.

<sup>49</sup> The one exception is Fort Drum, a US Military Reservation east of Watertown. UCC was unable to identify who at this extensive installation would be in charge of cable television franchising matters. The Fort Drum website has many pages but none appear to describe any cable TV franchise relationship or process. Therefore, no notice of data acquisition was served on Ft. Drum. In this regard, we would note that none of the other thirty-

The pertinent result data are set out in the table below. They show that with respect to WTVH in the greater Watertown area, significant viewing no longer holds.

Figures for the share and the cume (with the standard error added in each case) are presented. Those sums appear in the 'Effective Share' and 'Effective Cume' columns in the tables. The 'Thresholds' column indicates the Share/Cume levels (3/25 since WTVH is a network station). The words 'Yes' or 'No' indicate whether, as to each statistic, the threshold for significantly-viewed status has been met.

The 'order of operations' for deriving a conclusion with respect to each table is as follows: For the Survey Period in the first row, if the outcome in the Thresholds column indicates either one or two 'No' answers, then WTVH has failed the significantly-viewed test for that period, and the analysis moves to the second row's Survey Period. If the Thresholds column again indicates either one or two 'No' answers, WTVH has failed the test for the second year. Having failed the significantly-viewed test for two consecutive years, WTVH no longer meets the criteria for the Significantly-viewed Exception.

Following each table, we provide the required correlation of zip code, community and cable unit (Zip Code ↔ Community ↔ Cable Community Unit ID) and resolve any potential ambiguity.

## 2. Watertown; Adams; Carthage

**Table 3 -- WTVH Viewing in Zip Code 13601 = Watertown**

Survey Periods	Households Studied	[Share] + [Standard Error]	Effective Share	[Cume] + [Standard Error]	Effective Cume	Thresholds 3   25
Feb/Nov 2014	9	[0.00] + [0.00]	0.00	[0.00] + [0.00]	0.00	No   No
Feb/May 2015	14	[0.00] + [0.00]	0.00	[0.00] + [0.00]	0.00	No   No

Concerning the Zip Code ↔ Community ↔ Cable Community Unit ID correlations:

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some franchising authorities objected to the use of Nielsen for this purpose or the Nielsen methodology. Where all civilian authorities were comfortable with United's plans, it stands to reason that the military authorities, whose mission is centered in the training of troops to wage war, are uninterested with respect to the procedures for securing viewing data concerning importation of a duplicate CBS affiliate signal based some 80 miles from the Fort. Even as recently as this week, personnel contacted at the Fort were unsure that Ft. Drum even was a franchising authority, and if so, who on post would deal with such matters. Further, the gravamen as to United's Petition with regard to Ft. Drum is based on signal strength data (i.e., Viewability) rather than audience surveys and ratings numbers. Accordingly, United requests a waiver of Section 76.54(b) with respect to Ft. Drum. The Garrison Commander of Ft. Drum is being served with a copy of the instant Petition and will have ample opportunity to comment on it. If, as part of such comments, Ft. Drum should protest the Nielsen methodology or any other aspect of the process, United will not object to the FCC's consideration of any methodology-based objection on the premise that such objection should have been raised earlier in response to United's notice.



a. *Zip Code ↔ Community*. On the US Postal Service website<sup>50</sup> the zip code ‘13601’ returns Watertown as the ‘primary city’ and Glen Park as an ‘acceptable’ alternative. Glen Park is a village (population 502 in the 2010 census) immediately northwest of Watertown. The input ‘Watertown’ returns zip codes 13601, 13602, and 13603; and the input ‘Glen Park’ returns zip code 13601. Going the other direction, the input ‘13602’ returns Fort Drum as the primary city with Watertown as an acceptable alternative. Fort Drum is a military base northeast of Watertown. The input ‘Fort Drum’ returns zip codes 13602 and 13603. The input ‘13603’ returns Watertown as the primary city with Fort Drum as acceptable.

Here, the redundancies built into the Postal Service’s zip code scheme may cause confusion. Because these city names and zip codes do not precisely coincide, it is appropriate to check for the possibility of double-counting. That is, it is necessary to be confident that, as to the Watertown-related viewing statistics (associated with zip code 13601), the USPS redundancies do not affect the validity of the statistics. We do this by showing that the area enclosed by the ‘13601’ Nielsen geography grouping does not include the other geographical areas noted above. See [Exhibit 2](#) and similar resources at <https://www.unitedstateszipcodes.org>. It can therefore be concluded that the ‘community-specific’ analysis for Watertown is not threatened by a double-counting error.

b. *Community ↔ Cable Community Unit ID*. On the Commission’s COALS website page<sup>51</sup> the Community Unit IDs associated with the communities we have noted are: the City of Watertown (NY0145), the surrounding Town of Watertown (NY0146), the Village of Glen Park (NY0631) and Fort Drum (NY0061). Each of these is an operation of Time Warner Cable (recently acquired by Charter Communications). This information is straightforward so there should be no confusion with respect to which particular cable operations will be required to treat WTVH as a distant signal – *i.e.*, NY0145, NY0146, NY 0631 and NY0061.

**Table 4 – WTVH Viewing in Zip Code 13605 = Adams**

Survey Periods	Households Studied	[Share] + [Standard Error]	Effective Share	[Cume] + [Standard Error]	Effective Cume	Thresholds 3   25
Feb/Nov 2014	5	[0.00] + [0.00]	0.00	[0.00 + [0.00]	0.00	No   No
Feb/May 2015	2	[0.00] + [0.00]	0.00	[0.00] + [0.00]	0.00	No   No

<sup>50</sup> <http://www.unitedstateszipcodes.org>.

<sup>51</sup> <https://apps.fcc.gov/coals/forms/search/cableSearchNf.cfm>.

Concerning the Zip Code ↔ Community ↔ Cable Unit ID correlations:

1. *Zip Code ↔ Community*. On the US Postal Service website the zip code ‘13605’ returns Adams as the ‘primary city’ and Smithville as ‘acceptable.’ Smithville is an informal hamlet on the western line of the Town of Adams. It does not even have the status of a census-designated place. The input ‘Adams’ returns zip code 13605. The input ‘Smithville’ does not return a zip code.<sup>52</sup>

2. *Community ↔ Cable Unit ID*. On the Commission’s COALS website page, the Community Unit IDs associated with Adams are: NY0586 and NY0587 (Time Warner Cable). Evidently one is for the Village of Adams and the other is for the much larger Town of Adams. There is no CUID associated with Smithville. *See* n. 53.

Accordingly, with respect to Adams, there is no threat of double-counting and it is clear which cable operations will be required to treat WTVH as a distant signal.

**Table 5 – WTVH Viewing in Zip Code 13619 = Carthage**

Survey Periods	Households Studied	[Share] + [Standard Error]	Effective Share	[Cume] + [Standard Error]	Effective Cume	Thresholds 3   25
Feb/Nov 2014	4	[0.00] + [0.00]	0.00	[0.00 + [0.00]	0.00	No   No
Feb/May 2015	3	[0.00] + [0.00]	0.00	[0.00] + [0.00]	0.00	No   No

Concerning the Zip Code ↔ Community ↔ Cable Unit ID correlations:

1. *Zip Code ↔ Community*. The US Postal Service website returns zip code ‘13619’ for Carthage as ‘primary city.’ Champion, Champion Huddle, Herrings, West Carthage and Wilna are ‘unacceptable.’ When any of those names is entered into the USPS zip code generator, ‘13619’ is returned.

2. *Community ↔ Cable Unit ID*. On the Commission’s COALS website, the Community Unit IDs associated with the above communities are: Carthage (NY0064), Champion (NY0062), Herrings (NY0065), West Carthage (NY0066), and Wilna (NY0067). Champion Huddle, as a mere hamlet, is not considered a separate “community” independent of the Town of Champion.

Therefore, with respect to Carthage there is no threat of double-counting and it is clear which cable operations will be required to treat WTVH as a distant signal.

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<sup>52</sup> We note there is another ‘Smithville, New York’ – in Chenango County (on the border of Broome County), some 140 miles south of Watertown. The Smithville in Chenango County has a substantial population of 1,330 as of the last census. It is contrary to Post Office policy to establish a post office in multiple communities with the same name within the same state. This illustrates the inconsequential nature of the Smithville in Jefferson County.

More generally, the Nielsen data consist of relatively few diaries in each of the smaller jurisdictions in Jefferson County. Yet in the *aggregate* there are a substantial number of diaries outside Watertown, Carthage and Adams. These record a significantly meaningful pattern of viewing (or rather *non*-viewing) of WTVH in this County. The data taken as a whole demonstrate the accuracy of the viewability concept discussed above, because the *only* zip code where Nielsen entered any off-air viewing of WTVH at all was 13661 (Mannsville / Ellisburg). That zip code covers the portion of Jefferson County within the predicted WTVH coverage contour, closest to Syracuse.

In order to relate the Nielsen data to those places in Jefferson County recognized by the FCC as “Community Units” within the meaning of Section 76.5(dd) of the Rules, we tie the various zip code communities of Table I to the County’s Community Units identified in the Commission’s COALS database:

**Table 6**  
**Correlation of Zip Codes with Subject Communities and Associated CUIDs**

Zip Code	Community	CUID	Notes
13601	Watertown (City)	0145	
	Watertown (Town)	0146	
	Glen Park	0631	Village adjacent to Watertown
13602 13603	Fort Drum	0061	Military jurisdiction independent of Jefferson County Town boundaries
13606	Adams Center	5143	Adams Center is a hamlet in the Town of Adams. The 13606 Zip Code area covers most of the Town; the majority of which is north of WTVH contour
13605	Adams (Village)	1776	Zip code area covers the Village of Adams, the south end of the Town of Adams and much of the Towns of Ellisburg and Henderson. The Village is barely within the WTVH contour..
	Ellisburg (Town)	1514	
	Henderson (pt)	1700	
13607	Alexandria (Town)	1323 1528	Two CUIDs reflecting the existence of two competing cable TV concerns
	Alexandria Bay	1245	Village surrounded by the Town of Alexandria.
13608	Antwerp (Village) Town of Antwerp	1360 1361	Zip code area covers both Town and Village
13611	Belleville	1514 (pt)	Hamlet in the Town of Ellisburg
13612	Black River	0142	Village between Rutland and LeRay. Zip code area includes most of the Town of Rutland.
	Rutland	0562	
13615	Brownville (Village)	0630 1418	The zip code area includes a small part of the Town of Brownville (see 13634)
13616	Calcium	0143 (pt)	Calcium is a census-designated place within the Town of LeRay. Zip code area spills over into Pamela.
	Pamelia (pt)	0144 (pt)	
13618	Cape Vincent	1420 1421	The Village and surrounding Town of Cape Vincent share the same zip code.
13619	Carthage	0064	Village surrounded by Town of Wilna

	Wilna	0067	Zip code excludes Fort Drum
	West Carthage	0066	Village adjacent to Town of Champion
	Champion	0062	Great Bend and Champion Huddle are hamlets in the Town of Champion.
13622	Lyme	1348	
	Chaumont	1344 (pt)	See also zip 13693
13624	Clayton	1345 1346	Zip code area covers both Clayton the Village and the surrounding Town.
13628	Deferiet	0063	Deferiet is a Village in the Town of Wilna.
13632	Depauville	1346 (pt)	Depauville is a hamlet in the Town of Clayton.
13634	Dexter and Town of Brownville	1347 1418	Dexter is a village surrounded by the Town of Brownville (CUID 1418). Limerick is a hamlet in the Town of Brownville. It has no separate CUID.
13636	Ellisburg (Village)	1465	Zip code area includes a small part of the Town of Ellisburg.
13637	Evans Mills	0143 (pt)	Evans Mills is a Village surrounded by the Town of LeRay, but not deemed to be a separate Community Unit.
	LeRay	0143	
	Pamelia (pt)	0144	
13638	Rutland & Felts Mills	0562	Zip code covers only the northeast corner of the Town of Rutland; most of the Town is in zip code 13612
13640	Wellesley Island	1495 (pt)	Hamlet in Orleans
	Fineview	1495 (pt)	Hamlet in Orleans
13641	Fishers Landing	1495 (pt)	Hamlet in Orleans
13643	Great Bend	0062 (pt)	Tiny hamlet in Town of Champion
13650	Henderson	1700 (pt)	Part of Town also in zip 13605
	Woodville	1514 (pt)	Hamlet in Town of Ellisburg
13651	Henderson Harbor	1700 (pt)	Hamlet in Henderson
13656	Orleans	1495	Includes western part of Wellesley Island (the island, not the hamlet)
13657	Limerick	1418 (pt)	Hamlet in Town of Brownville; zip code area vanishingly small.
13659	Lorraine & Worth	1727	Worth is a Town but missing from COALS as a separate Community Unit. Mostly within WTVH contour.
13661	Mannsville	1514 (pt)	Hamlet in Ellisburg
13665	Natural Bridge	0067 (pt)	Hamlet in Wilna
13671	Oxbow	1361 (pt)	Hamlet in Antwerp; tiny zip code area
13673	Philadelphia	1559 1358	Village surrounded by Town of the same name.
13674	Pierrepont Manor	1514 (pt)	Hamlet in Ellisburg
13675	Plessis	1323 (pt)	Hamlet in Town of Alexandria
13679	Redwood	1323 (pt)	Hamlet in Town of Alexandria
13682	Rodman	1442	All but SW corner of the Town outside of WTVH contour
13685	Hounsfield	1401	Town west of Watertown
	Sackets Harbor	1349	Village in Town of Hounsfield
13691	Theresa Theresa (Village) Theresa (Town)	1684 1362 1363	Castle Cable system TWC/Charter systems
13692	Thousand Isl. Park	1495 (pt)	Park in Town of Orleans

13693	Three Mile Bay	1344 (pt)	Part of the Town of Chaumont
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For the above determinations, we used the detailed maps of the various Jefferson County jurisdictions set forth at <http://www.co.jefferson.ny.us/index.aspx?page=369>.

### **ANNOTATIONS TO THE SIGNIFICANTLY VIEWED LIST**

The Viewability Table indicates the cases in which WTVH is not viewable over the air. The attached Nielsen data are thoroughly consistent with the teaching of the Viewability Table. Accordingly, the Commission's Significantly Viewed List should be annotated as follows:

#### **Stations Subject to Programming Deletions in the Listed Communities by Operation of the FCC's Network Non-duplication and Program Exclusivity Rules**

#### **NEW YORK**

#### **JEFFERSON COUNTY**

#Watertown (City) – WTVH	#Brownville (Town) – WTVH	#Evans Mills – WTVH
#Watertown (Town) – WTVH	#Cape Vincent (Town) – WTVH	#LeRay – WTVH
#Glen Park – WTVH	#Cape Vincent (Village) – WTVH	#Pamelia – WTVH
#Fort Drum – WTVH	#Carthage – WTVH	#Rutland – WTVH
#Adams (Town) – WTVH	#Wilna – WTVH	#Orleans – WTVH
#Adams (Village) – WTVH	#West Carthage – WTVH	#Philadelphia (Town) – WTVH
#Alexandria – WTVH	#Champion – WTVH	#Philadelphia (Village) – WTVH
#Alexandria Bay – WTVH	#Clayton (Village) – WTVH	#Rodman – WTVH
#Antwerp (Town) – WTVH	#Clayton (Town) – WTVH	#Hounsfield – WTVH
#Antwerp (Village) – WTVH	#Deferiet – WTVH	#Sackets Harbor – WTVH
#Black River – WTVH	#Depauville – WTVH	#Theresa (Town) – WTVH
#Brownville (Village) – WTVH	#Dexter – WTVH	#Theresa (Village) – WTVH

### **CONCLUSION**

A television station cannot be 'significantly' viewed in a cable community if its signal is not 'viewable' over-the-air in that community. United has shown that in the majority of locations in Jefferson County, the Viewability requirement is not met. Therefore, 'significantly viewed' status cannot apply in those cases.

WWNY-TV has been an exemplary steward of the public interest for more than 62 years. It is difficult to imagine a television licensee who has more faithfully embodied the ideals of Localism. Yet, for most of its history WWNY-TV has been precluded from enforcing in its own back yard the program exclusivity rights it pays for and which are crucial to the most robust realization of its purpose.

Here, the ‘lapse’ in significantly viewed status is not a recent development. It is not a result of changing demographics or other events that ordinarily can trigger a re-evaluation of a distant station’s significantly viewed classification. In this case, as we have explained, WTVH was *never* viewable over-the-air in most of the communities in question. Indeed, but for the power of the Commission’s Waiver Procedure to reveal the ‘over-the-air realities’ of the matter, WWNY-TV would continue to labor under the stresses of a kind of violent fiction.

For these reasons, United urges the Commission to grant this Petition for Special Relief, consistent with the Annotations to the Significantly Viewed List set forth herein.

Respectfully submitted,

**UNITED COMMUNICATIONS  
CORPORATION**

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*Its counsel*

August 10, 2017

## DECLARATION of JAMES CORBIN

I, James Corbin, am the WWNY/WNYF Program Director for United Communications Corporation, licensee of WWNY-TV and WNYF-CD in Carthage and Watertown, New York. I hereby declare under penalty of perjury under the laws of New York that the statements of fact set forth in the foregoing Petition for Special Relief are true and correct to the best my personal knowledge. Dated August 9, 2017.

*s/ James Corbin*

James Corbin

## Exhibit 1

### Nielsen Studies for WTVH



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WTVH during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2014, November 2014, February 2015 and May 2015 measurement periods. The report is based on a series of zip codes. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Monday to Sunday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour M-Su 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour M-Su 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the M-Su 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:



## Share

$$Share = \frac{\sum_1^n (w * Qhrs(s))}{\sum_1^n (w * Qhrs(t))}$$

## Share Standard Error

$$Std \ Error = \sqrt{\frac{n}{n-1} * \sum_1^n \left[ \frac{(w * Qhrs(s)) - (Share * w * Qhrs(t))}{\sum_1^n (w * Qhrs(t))} \right]^2}$$

where  $n$  = number of intab households

where  $w$  = household weight

where  $Qhrs(s)$  = total quarter hours tuned to station of interest by household

where  $Qhrs(t)$  = total quarter hours tuned by household

## Average Weekly Cume

$$Average \ Weekly \ Cume = \frac{1}{z} * \sum_1^z \left[ \frac{\sum_1^n (HH \ Weight * x)}{\sum_1^n HH \ Weight} \right]$$

## Average Weekly Cume Standard Error

$$Std \ Error = \sqrt{\frac{1}{z^2} \sum_1^z \left[ \frac{n}{n-1} * \sum_1^n \left[ \frac{(x - Week \ Cume) * HH \ Weight}{\sum_1^n HH \ Weight} \right]^2 \right]}$$

where  $z$  = number of weeks in analysis (with non-zero intabs)

where  $n$  = number of intab households in week

where  $x = 0$  if household did not tune station of interest

where  $x = 1$  if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.

nielsen		Significant Viewing Study				
		Watertown				
		Feb14, Nov14, Feb15 & May15				
		Su-Sa 7A-1A				
		WTVH				
WTVH						
Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13601	Number of Intabs	5	4	5	9	23
	Average Weekly Cume	0.00	0.00	0.00	0.00	0.00
	Cume Std. Error	0.00	0.00	0.00	0.00	0.00
	Share	0.00	0.00	0.00	0.00	0.00
	Share Std. Error	0.00	0.00	0.00	0.00	0.00
13602	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13603	Number of Intabs	0	1	2	0	3
	Average Weekly Cume	-	0.00	0.00	-	0.00
	Cume Std. Error	-	0.00	0.00	-	0.00
	Share	-	0.00	0.00	-	0.00
	Share Std. Error	-	-	0.00	-	0.00
13605	Number of Intabs	3	2	0	2	7
	Average Weekly Cume	0.00	0.00	-	0.00	0.00
	Cume Std. Error	0.00	0.00	-	0.00	0.00
	Share	0.00	0.00	-	0.00	0.00
	Share Std. Error	0.00	0.00	-	0.00	0.00
13606	Number of Intabs	1	0	1	1	3
	Average Weekly Cume	0.00	-	0.00	0.00	0.00
	Cume Std. Error	0.00	-	0.00	0.00	0.00
	Share	0.00	-	0.00	0.00	0.00
	Share Std. Error	-	-	-	-	0.00
13607	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13608	Number of Intabs	0	1	1	2	4
	Average Weekly Cume	-	0.00	0.00	0.00	0.00
	Cume Std. Error	-	0.00	0.00	0.00	0.00
	Share	-	0.00	0.00	0.00	0.00
	Share Std. Error	-	-	-	0.00	0.00
13611	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-

Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13612	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13615	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13616	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13618	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13619	Number of Intabs	0	4	1	2	7
	Average Weekly Cume	-	0.00	0.00	0.00	0.00
	Cume Std. Error	-	0.00	0.00	0.00	0.00
	Share	-	0.00	0.00	0.00	0.00
	Share Std. Error	-	0.00	-	0.00	0.00
13622	Number of Intabs	2	0	1	0	3
	Average Weekly Cume	0.00	-	0.00	-	0.00
	Cume Std. Error	0.00	-	0.00	-	0.00
	Share	0.00	-	0.00	-	0.00
	Share Std. Error	0.00	-	-	-	0.00
13624	Number of Intabs	1	1	0	0	2
	Average Weekly Cume	0.00	0.00	-	-	0.00
	Cume Std. Error	0.00	0.00	-	-	0.00
	Share	0.00	0.00	-	-	0.00
	Share Std. Error	-	-	-	-	0.00
13628	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-

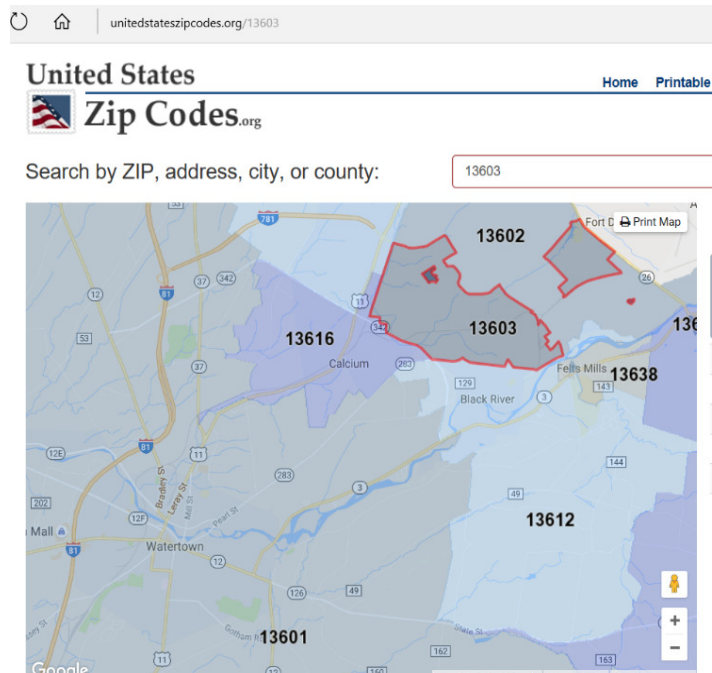
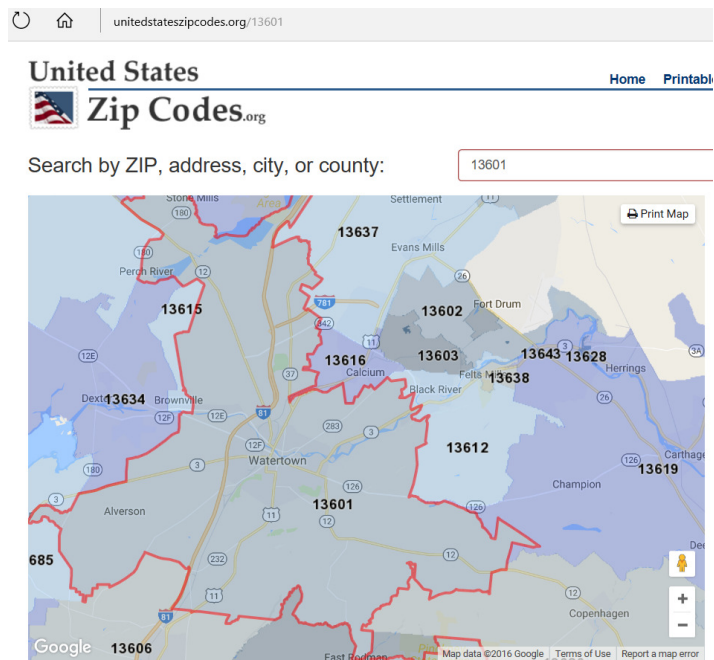
Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13632	Number of Intabs	0	1	0	0	1
	Average Weekly Cume	-	0.00	-	-	0.00
	Cume Std. Error	-	0.00	-	-	0.00
	Share	-	0.00	-	-	0.00
	Share Std. Error	-	-	-	-	-
13634	Number of Intabs	0	0	0	0	6
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13636	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13637	Number of Intabs	0	0	0	0	6
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13638	Number of Intabs	0	1	0	0	1
	Average Weekly Cume	-	0.00	-	-	0.00
	Cume Std. Error	-	0.00	-	-	0.00
	Share	-	0.00	-	-	0.00
	Share Std. Error	-	-	-	-	-
13640	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13641	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13643	Number of Intabs	1	0	0	1	2
	Average Weekly Cume	0.00	-	-	0.00	0.00
	Cume Std. Error	0.00	-	-	0.00	0.00
	Share	0.00	-	-	0.00	0.00
	Share Std. Error	-	-	-	-	0.00

Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13650	Number of Intabs	0	1	0	1	2
	Average Weekly Cume	-	0.00	-	0.00	0.00
	Cume Std. Error	-	0.00	-	0.00	0.00
	Share	-	0.00	-	0.00	0.00
	Share Std. Error	-	-	-	-	0.00
13651	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13656	Number of Intabs	1	0	2	0	3
	Average Weekly Cume	0.00	-	0.00	-	0.00
	Cume Std. Error	0.00	-	0.00	-	0.00
	Share	0.00	-	0.00	-	0.00
	Share Std. Error	-	-	0.00	-	0.00
13657	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13659	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13661	Number of Intabs	0	1	1	0	2
	Average Weekly Cume	-	100.00	0.00	-	50.00
	Cume Std. Error	-	0.00	0.00	-	0.00
	Share	-	8.24	0.00	-	6.31
	Share Std. Error	-	-	-	-	2.96
13665	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13671	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-

Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13673	Number of Intabs	0	0	2	0	2
	Average Weekly Cume	-	-	0.00	-	0.00
	Cume Std. Error	-	-	0.00	-	0.00
	Share	-	-	0.00	-	0.00
	Share Std. Error	-	-	0.00	-	0.00
13674	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13675	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13679	Number of Intabs	1	0	0	1	2
	Average Weekly Cume	0.00	-	-	0.00	0.00
	Cume Std. Error	0.00	-	-	0.00	0.00
	Share	0.00	-	-	0.00	0.00
	Share Std. Error	-	-	-	-	0.00
13682	Number of Intabs	1	1	0	1	3
	Average Weekly Cume	0.00	0.00	-	0.00	0.00
	Cume Std. Error	0.00	0.00	-	0.00	0.00
	Share	0.00	0.00	-	0.00	0.00
	Share Std. Error	-	-	-	-	0.00
13685	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-
13691	Number of Intabs	0	3	0	1	4
	Average Weekly Cume	-	0.00	-	0.00	0.00
	Cume Std. Error	-	0.00	-	0.00	0.00
	Share	-	0.00	-	0.00	0.00
	Share Std. Error	-	0.00	-	-	0.00
13692	Number of Intabs	0	0	0	0	0
	Average Weekly Cume	-	-	-	-	-
	Cume Std. Error	-	-	-	-	-
	Share	-	-	-	-	-
	Share Std. Error	-	-	-	-	-

Geography Grouping (Zips)	Results	Feb14	Nov14	Feb15	May15	Feb14, Nov14, Feb15, & May15 Combined
13693	Number of Intabs	0	0	0	1	1
	Average Weekly Cume	-	-	-	0.00	0.00
	Cume Std. Error	-	-	-	0.00	0.00
	Share	-	-	-	0.00	0.00
	Share Std. Error	-	-	-	-	-

## Exhibit 2



## CERTIFICATE OF SERVICE

I, Stuart Dong, legal assistant with the firm of Wood, Martin & Hardy, PC, hereby certify that on August 10, 2017, a copy of the foregoing "Petition for Special Relief" was deposited in the U.S. mail, postage prepaid, addressed to the following:

Cable Franchise Authority  
Town of Watertown  
Catherine M. Rich, Town Clerk  
22867 County Route 67  
Watertown, NY 13601

Cable Franchise Authority  
City of Watertown  
Ann M. Saunders, City Clerk  
245 Washington Street  
Watertown, NY 13601

Cable Franchise Authority  
Village of Glen Park  
Constance Hoard, Village Clerk  
642 Main Street  
Glen Park, NY 13601

Cable Franchise Authority  
Col. Dean Harrison  
Garrison Commander  
c/o Public Affairs Office  
10012 S. Riva Ridge Loop  
Fort Drum, NY 13602

Cable Franchise Authority  
Town of Adams  
John E. Knapp, Town Clerk  
13263 US Route 11, P.O. Box 152  
Adams Center, NY 13606

Cable Franchise Authority  
Village of Adams  
Darlene M. Rexford, Village Clerk  
3 South Main Street  
Adams, NY 13605

Cable Franchise Authority  
Town of Alexandria  
Ellen S. Peck, Town Clerk  
46372 County Route 1  
Alexandria Bay, NY 13607

Cable Franchise Authority  
Village of Antwerp  
Amy Cole, Village Clerk  
P.O. Box 620  
Antwerp, NY 13608

Cable Franchise Authority  
Village of Black River  
Kathie Montigelli, Village Clerk  
107 Jefferson Place  
Black River, NY 13612

Cable Franchise Authority  
Village of Brownville  
Brenda McConnell, Village Clerk  
P.O. Box 118  
Brownville, NY 13615

Cable Franchise Authority  
Village of Cape Vincent  
Mary Rupp, Village Clerk  
127 Joseph St, PO Box 337  
Cape Vincent, NY 13618

Cable Franchise Authority  
Town of Cape Vincent  
Michelle Bouchard, Town Clerk  
1964 NYS Route 12E, P.O. Box 680  
Cape Vincent, NY 13618

Cable Franchise Authority  
Village of Carthage  
Kristy L. O'Shaughnessy, Village Clerk  
120 S. Mechanic Street  
Carthage, NY 13619

Cable Franchise Authority  
Village of West Carthage  
Deborah J. Pierce, Village Clerk  
61 High Street  
Carthage, NY 13619

Cable Franchise Authority  
Town of Champion  
Christina M. Vargulick, Town Clerk  
10 N. Broad Street  
Carthage, NY 13619

Cable Franchise Authority  
Village of Clayton  
Geneva Phelps Miller, Village Clerk  
P.O. Box 250  
Clayton, NY 13624

Cable Franchise Authority  
Town of Clayton  
Kathleen E. LaClair, Town Clerk  
405 Riverside Drive  
Clayton, NY 13624

Cable Franchise Authority  
Village of Deferiet  
Gail LaPierre, Village Clerk  
P.O. Box 206  
Deferiet, NY 13628

Cable Franchise Authority  
Village of Dexter  
Patricia Lamon, Village Clerk  
P.O. Box 62  
Dexter, NY 13634

Cable Franchise Authority  
Town of LeRay  
Mary C. Smith, Town Clerk  
8650 LeRay Street  
Evans Mills, NY 13637

Cable Franchise Authority  
Town of Pamela  
Gwen E. Call, Town Clerk  
25859 NYS Route 37  
Watertown, NY 13601

Cable Franchise Authority  
Town of Rutland  
Elizabeth A. Berghorn, Town Clerk  
28411 NYS Route 126  
Black River, NY 13612

Cable Franchise Authority  
Town of Lyme  
Kim Burns-Wallace, Town Clerk  
12175 NYS Route 12E, P.O. Box 66  
Chaumont, NY 13622

Cable Franchise Authority  
Town of Orleans  
Tammy J. Donnelly, Town Clerk  
P.O. Box 103  
LaFargeville, NY 13656



Cable Franchise Authority  
Village of Philadelphia  
Mariana Cooke, Village Clerk  
P.O. Box 70  
Philadelphia, NY 13673

Cable Franchise Authority  
Town of Hounsfield  
Diane M. Nier, Town Clerk  
18774 County Route 66  
Watertown, NY 13685

Cable Franchise Authority  
Town of Theresa  
Kim A. Delles, Town Clerk  
215 Riverside Avenue  
Theresa, NY 13691

Time Warner Cable Northeast LLC  
12405 Powerscourt Drive  
St. Louis, MO 63131

Lawrence M. Miller (counsel for WPBS-TV)  
Schwartz, Woods & Miller  
1233 20<sup>th</sup> Street, NW  
Washington, DC 20036

Cable Franchise Authority  
Town of Philadelphia  
Cheryl Reed, Town Clerk  
33019 U.S. Route 11  
Philadelphia, NY 13673

Cable Franchise Authority  
Village of Sackets Harbor  
Peggy Kelly, Village Clerk  
P.O. Box 335  
Sackets Harbor, NY 13685

Cable Franchise Authority  
Town of Wilna  
Michel R. Camidge, Town Clerk  
414 State Street  
Carthage, NY 13619

Elizabeth Ryder (WWTI)  
NexStar Broadcasting, Inc.  
545 E. John Carpenter Freeway  
Suite 700  
Irving, Texas 75062

DISH Corporate Office  
4700 S. Syracuse Street  
Suite 450  
Denver, CO 80237

Cable Franchise Authority  
Town of Rodman  
Polly J. Morgan, Town Clerk  
P.O. Box 523  
Rodman, NY 13682

Cable Franchise Authority  
Village of Theresa  
Tara Leeson, Village Clerk  
P.O. Box 299  
Theresa, NY 13691

Castle Cable TV Inc.  
26 S. Main St.  
Hammond, NY, 13646

Maureen Nagle (counsel for WTVH)  
Cooley LLP  
1299 Pennsylvania Avenue, NW  
Suite 700  
Washington, DC 20004

DirecTV  
2260 E. Imperial Hwy  
El Segundo, CA 90245

*s/ Stuart Dong*

Stuart Dong

WOOD, MARTIN & HARDY, PC  
3300 Fairfax Drive, Suite 202  
Arlington, Virginia 22201  
(703) 465-2361